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| To: Commissioner for Patents for Examiner Jeffrey J. Pizlall Group Art Unit 2673 | Facsimile No.: 571/273-8300 |
| From: Amelia Turner Legal Assistant to Stephen R. Tkacs | No. of Pages Including Cover Sheet: 37 |
| Message: Transmitted herewith: <ul style="list-style-type: none">• Transmittal Document;• Response to Notification of Non-Compliant Appeal Brief;• Copy of Notification of Non-Compliant Appeal Brief; and• Supplemental Appeal Brief (37 C.F.R. 41.37). | |
| Re: Application No.: 09/751,076 Attorney Docket No: AUS920000946US1 | |
| Date: Monday, September 12, 2005 | |
| Please contact us at (972) 385-8777 if you do not receive all pages indicated above or experience any difficulty in receiving this facsimile. | <i>This Facsimile is intended only for the use of the addressee and, if the addressee is a client or their agent, contains privileged and confidential information. If you are not the intended recipient of this facsimile, you have received this facsimile inadvertently and in error. Any review, dissemination, distribution, or copying is strictly prohibited. If you received this facsimile in error, please notify us by telephone and return the facsimile to us immediately.</i> |

**PLEASE CONFIRM RECEIPT OF THIS TRANSMISSION BY
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Harif

Serial No.: 09/751,076

Filed: December 29, 2000

For: Wearable Keyboard Apparatus

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§
§

Group Art Unit: 2673

Examiner: Piziali, Jeffrey J.

Attorney Docket No.: AUS920000946US1

35525

PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

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|---|
| <p><u>Certificate of Transmission Under 37 C.F.R. § 1.8(a)</u></p> <p>I hereby certify this correspondence is being transmitted via facsimile to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, facsimile number (571) 273-8300, on September 12, 2005.</p> <p>By: <u>Amelia C. Turner</u></p> <p>Amelia C. Turner</p> |
|---|

TRANSMITTAL DOCUMENTCommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

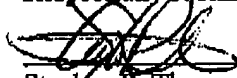
Sir:

TRANSMITTED HEREWITH:

- Response to Notification of Non-Compliant Appeal Brief;
- Supplemental Appeal Brief (37 C.F.R. 41.37); and
- Copy of Notification of Non-Compliant Appeal Brief.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

Stephen R. Tkacs
Registration No. 46,430
AGENT FOR APPLICANTDuke W. Yee
Registration No. 34,285
YEE & ASSOCIATES, P.C.
P.O. Box 802333
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ATTORNEY FOR APPLICANT

08/22/05 MON 09:46 FAX 7033089051

E-CLUSTER MAIL ROOM

002

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|--|-------------------------------|-------------------------------|--|
| Notification of Non-Compliance With 37 CFR 1.192(c) | Application No. 09/751,076 | Applicant(s) HARIF, SHLOMI | |
| | Examiner Jeff Piziali | Art Unit 2873 | |


-The MAILING DATE of this communication appears on the cover sheet with the correspondence address-

The Appeal Brief filed on 24 July 2005 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1208.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

- ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
- ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
- ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
- ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
- ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
- ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - ☒ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
- ☒ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
- ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
- ☒ Other (including any explanation in support of the above items):

See Attached Continuation Sheet and Interview Summary.


J.P.
22 August 2005

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Continuation Sheet (PTOL-462)

Application No. 009/761,076

Continuation of 9. Other (including any explanation in support of the above claims): Regarding section 8(a) of this Notice of Non-Compliance With 37 CFR 1.192(c): A single ground of rejection [i.e. Anticipation by Furusho et al. (US 6,310,604) under 35 U.S.C. 102(e)] has been applied to two or more claims [i.e. claims 1, 3-5, 7-9, 12-16, 17, and 19] in this application, and the brief omits the statement required by 37 CFR 192(c)(7) that one or more claims [i.e. claims 13 and 15] do not stand or fall together [see Page 3, 'Grouping of Claims' section of the Brief], yet presents arguments in support thereof in the argument section of the brief [see Pages 10-11, Section VII of the 'Argument' section of the Brief].

Regarding section 8(b) of this Notice of Non-Compliance With 37 CFR 1.192(c): A single ground of rejection [i.e. Anticipation by Furusho et al. (US 6,310,604) under 35 U.S.C. 102(e)] has been applied to two or more claims [i.e. claims 1, 3-5, 7-9, 12-16, 17, and 19] in this application, and the brief includes the statement required by 37 CFR 192(c)(7) that one or more claims [i.e. claim 14] do not stand or fall together [see Page 3, 'Grouping of Claims' section of the Brief], yet does not present arguments in support thereof in the argument section of the brief [see Pages 10-11, Section VII of the 'Argument' section of the Brief].

Regarding section 7 of this Notice of Non-Compliance With 37 CFR 1.192(c): The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)) [see Page 4, Top Paragraph of the 'Argument' section; and Page 11, bottom of Section VII] of the 'Argument' section of the Brief.

In particular, the brief provides no headings for either issue on appeal [i.e. Anticipation by Furusho et al. (US 6,310,604) under 35 U.S.C. 102(e); or Obviousness Unpatentability over Furusho et al. (US 6,310,604) under 35 U.S.C. 103(a)].

The brief does provide a paragraph regarding the 35 U.S.C. 102(e) rejection issue(s) [see Page 4, Top Paragraph of the 'Argument' section of the Brief], but neglects including at least claims 4, 17, and 19.

The brief also provides a paragraph regarding the 35 U.S.C. 103(a) rejection issue(s) [see Page 11, bottom of Section VIII of the 'Argument' section of the Brief], but at least claims 10 and 11 are earlier argued in an entirely separate section [see Pages 4-6, Section I, Group A of the 'Argument' section of the Brief].

Moreover, the Appeal Brief is replete with claim grouping issue errors. For instance, Section I argues the subject matter of "a Keyboard Having a Plurality of Switch Units as Claimed (Groups A-E, H, and J)" [see Pages 4-6 of the Brief]. However, Group H [i.e. claim 19] is drawn to the entirely different and distinct subject matter of a pointing apparatus (not a keyboard) comprising a single switch unit (not a plurality of switch units).

Section III argues the subject matter of "a Fabric Being Integrated Within an Article of Wearing Apparel (Group C)" [i.e. Claims 4 & 17 - see Page 7 of the Brief]. However, Section III also states, "Therefore, if (sic) follows that the further limitation in claim 2 would not have been obvious given the teachings of Furusho." However, this "obviousness" argument has been improperly presented in the heading-less 35 U.S.C. 102(e) argument section of the brief. Claim 2 does not depend on claim 4 or 17, it is not part of Group C, and it is drawn to the completely unrelated subject matter of a piezoelectric-sensitive component.

Section VI argues the subject matter of "a Pointing Device (Groups F, G, and I)" [see Pages 9-10 of the Brief]. However, Group I [i.e. claim 2] is drawn to the entirely different and distinct subject matter of a keyboard (not a pointing device).

Section VII argues the subject matter of "a Pointing Device Including a Capsule in a Shape of a Rectangle (Group G)" [see Pages 10-11 of the Brief]. However, Group G [i.e. claim 14] is drawn to the entirely different and distinct subject matter of controlling a display pointer on a display of a data processing system (nothing whatsoever to do with the argued rectangular capsule).

By such above reasoning, the grounds of non-compliance with 37 CFR 1.192(c) are deemed proper, necessary, and thereby maintained at this time.

J.P.
22 August 2005.



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004

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|--------------------------|-----------------|--|---------------|--|
| Interview Summary | Application No. | | Applicant(s) | |
| | 09/751,076 | | HARIF, SHLOMI | |
| | Examiner | | Art Unit | |
| | Jeff Piziali | | 2673 | |

All participants (applicant, applicant's representative, PTO personnel):

(1) Jeff Piziali (3) _____

(2) Stephen R. Tkacs (Reg. No. 46,430) (4) _____

Date of Interview: 19 August 2005.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____

Claim(s) discussed: 1-20.

Identification of prior art discussed: None (Discussion pertained to matters of Appeal Brief Non-Compliance).

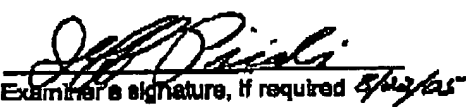
Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

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008

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135, (35 U.S.C. 132).

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiner's Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

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008

Continuation Sheet (PTOL-413)

Application No. 09/751,076

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Mr. Tkacs phoned the examiner on 19 August 2005, and requested an immediate telephonic interview be held pertaining to the Notification of Non-Compliant Appeal Brief mailed 11 August 2005. Despite not having a chance to prepare for the interview and get up to speed on the specific issues of the case, the examiner agreed to holding this spontaneous interview under the initial impression that only a brief general discussion would be taking place. Mr. Tkacs proceeded to dissect each aspect of the Notice of Non-Compliance under great scrutiny, quoting various sections of the MPEP verbatim along the way, and demanding that the Notice of Non-Compliance be formally renounced on the spot. The examiner demurred and suggested either a formal or informal Request For Reconsideration should be submitted, so the examiner could more thoroughly consider Mr. Tkacs' verbose contentions. Later that same day, Mr. Tkacs faxed an unsigned, three page Substance of Interview document to the examiner. This examiner interview summary is meant to serve as a formal response to Mr. Tkacs' phone interview and his faxed Substance of Interview.

Mr. Tkacs takes issue with the examiner's reliance upon 37 C.F.R. 41.37 in forming the Notice of Non-Compliance - because this rule was not yet in effect at the time the Appeal Brief in question was submitted on 24 July 2003. At the time of composing the Notice of Non-Compliance, the examiner had been unable to locate the old PTO-462 (Rev. 3-98) Non-Compliance form, and had instead resorted to using the new PTO-462 (Rev. 9-04) Non-Compliance form instead. The examiner apologizes for any undue confusion in this matter. However, the actual grounds for non-compliance listed on page two of the mailed Notice of Non-Compliance were drawn to the proper and timely rules under 37 CFR 1.182c (which was in full effect at the time of Appeal Brief submission).

Still, to alleviate any confusion, the examiner has, after some additional effort, managed to track down a proper and timely copy of the Notification of Non-Compliance With 37 CFR 1.182(c) [i.e. Form PTO-462 (Rev. 3-98)]. A filled-out copy of which has been attached to this interview summary. This new Notification of Non-Compliance With 37 CFR 1.182(c) takes the place the previous Notification of Non-Compliant Appeal Brief With 37 CFR 41.37, and the applicant's period of response has been restarted.

Furthermore, to simplify matters of Non-Compliance, and because Mr. Tkacs did manage to make some rather persuasive arguments in his Substance of Interview fax, the grounds of Non-Compliance pertaining to the 'Status of Claims' section, the 'Status of Amendments' section, and the 'Summary of Invention' section are hereby dismissed by the examiner.

However, as evidenced by the attached Notification of Non-Compliance With 37 CFR 1.182(c) form, there remains three separate and substantial grounds of Non-Compliance pertaining to the 'Grouping of Claims' and 'Argument' sections.

The examiner also apologizes for the lengthy delay between submission of the Appeal Brief and this Notice of Non-Compliance. However, as mentioned to Mr. Tkacs during the telephonic interview, the examiner did not have access to, or an opportunity to consider this Appeal Brief until mid-May of this year.

J.P.
22 August 2005.

